

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

WILLIE J. GILBERT

PETITIONER

V.

CIVIL ACTION NO.1:07CV136-WAP-JAD

LAWRENCE KELLY, et al.

RESPONDENTS

REPORT AND RECOMMENDATION

The petitioner has moved to dismiss his petition with prejudice (Doc. 27). The petitioner states that he does not want to forego his claims in the present petition, but is under the impression that he must dismiss this action in order to proceed in the state court. He is acting on erroneous information or an erroneous assumption of what the law requires. He needs to exhaust a claim in state court based on asserted newly discovered evidence, but may file in state court without dismissing this petition.

The undersigned recommends that the motion to dismiss this petition with prejudice based on the petitioner's motion be denied.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.1(C) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Petitioner is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date.

Petitioner is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 22nd day of September, 2008.

/s/ Jerry A. Davis  
U. S. MAGISTRATE JUDGE